

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

6:69cv07941-BB

RIO CHAMA STREAM SYSTEM

JOINT STATUS REPORT

Pursuant to the request of the Special Master at the Status Conference held in Santa Fe on October 29, 2008, counsel for the State of New Mexico, Ed Newville, Esq.; counsel for the Rio Gallina Acequia Association, the El Rito Community Ditch Association and La Asociacion de las Acequias del Rio Vallecitos, Tusas y Ojo Caliente, Mary E. Humphrey, Esq.; counsel for the United States, David W. Gehlert, Esq.; counsel for the Asociación de Acéquias Norteñas de Rio Arriba, John W. Utton, Esq., and; counsel for the Rio Chama Acequia Association, Fred J. Waltz, Esq., file this joint status report on the progress of the adjudication of water rights in the Rio Chama Stream System.

REPORT BY THE STATE OF NEW MEXICO

General Status Report on the Adjudication of Individual Subfiles in Sections 3 and 7

The adjudication of individual subfiles in Sections 3 and 7 is nearly complete. In Section 3, all subfiles in the Nutrias subsection are closed. There are 6 open subfiles in the Cebolla subsection and 8 open subfiles in the Canjilon subsection. There is a small amount of field work remaining to do with respect to some of the subfiles in Canjilon. A small number of the subfiles in the Canjilon

subsection may require an evidentiary hearing before the Court. All of the remaining open the subfiles in the Cebolla subsection (6) will likely require an evidentiary hearing.

There are 11 open subfiles in Section 7. The State anticipates that all of these subfiles, with the possible exception of 1 or 2 subfiles in the Tierra Amarilla and Brazos subsections, will be closed by agreement and the entry of a Consent Order.

The State will request a scheduling and pretrial conference with the Special Master to be held in April or May of 2009 for the remaining open subfiles in sections 3 and 7 in which it anticipates the need for an evidentiary hearing.

Irrigation Water Requirements in Sections 3 and 7

John Longworth, Chief of the OSE Water Use and Conservation Division, is currently recalculating proposed irrigation water requirements for all subsections in Section 3 and 7 pursuant to the stipulation on methodology in Sections 3, 5 and 7 filed June 16, 2005 (Doc. 7915). Counsel for the State is reviewing this information and will schedule a meeting with counsel for Acequias Norteñas (John Utton) to discuss the recalculations during the next two months.

Priority Dates in Section 1

The Acequia de Jose Ferran and its members have approved a joint stipulation on the correct priority date for the water rights under this ditch. The stipulation was filed with the Court on February 3, 2009 (Doc. 9401). Dr. John Baxter is looking into the history of the Upper and Lower Frijoles ditches on behalf of the State, and a possible revised date for these two private ditches has not yet been determined.

Dates for two other private ditches in Section 1 have yet to be addressed: (1) the Christ in the Desert Monastery ditch in subfile X-1 and, (2) the Ghost Ranch ditch in subfile CHCJ-007-0001. Fred

Waltz has agreed to provide the State with additional historical information on the Ghost Ranch Ditch (a/k/a Acequia de Ghost Ranch) by March 30, 2009 which the State will then review.

Attorney Annie Laurie-Coogan, on behalf of Christ in the Desert Monastery, has indicated that she is not in agreement with the State's proposal with regard to the monastery ditch. The State has proposed that the parties stipulate that there is no basis or need to revise the priority date (1904) contained in the Order entered for this ditch on March 10, 1971 (Doc. 1670).¹

The State is working to schedule a field inspection of the Winfield Morten Ditch as discussed at the working session with the Special Master held in Santa Fe on January 21, 2009. Persons to be included in the inspection will be Dr. John Baxter, Buck Wells from the OSE, representatives from the RCAA and the Special Master. Persons owning lands associated with this ditch will be notified of the date and time of the proposed field inspection.

The State anticipates that the Special Master will complete her report on the disputed dates for the Chamita, Hernandez and Salazar acequias in the near future, and that after a determination of those dates by the Court the State will be able to initiate *inter se* proceedings that will lead to a final determination of the priority dates of all ditches, community and private, in the Chama Mainstream Section.

United States' Reserved Water Rights Under the Wild and Scenic River Act

Representatives of the United States, the State of New Mexico, RCAA, and Acequia Norteñas

¹ There is some confusion in the record with regard to both of these ditches. The State believes that these two ditches are private rather than community ditches or "Acequias." However, they are described as Acequias in various pleadings and on several occasions Mr. Waltz has indicated that he represents them. *See e.g., Notice of Clarification of Representation of Acequias* filed September 14, 2007 (Doc. 8923). These matters should be clarified and if necessary corrected in the record.

continue to discuss a proposed Consent Order that will quantify the United States' instream flow right under the Wild and Scenic River Act. The attorneys and technical representatives for these parties, including representatives from the Interstate Stream Commission and Bureau of Land Management, met on December 4, 2009, in Santa Fe, to discuss the terms of a draft Consent Order proposed by the United States and the State of New Mexico. Since that meeting, the State has been researching the record to determine what parties may have standing to make objections to such a Consent Order in subsequent *inter se* proceedings.

Federal Non-Indian Stockwatering Claims

Within the next 2-3 weeks, the United States and the State of New Mexico will file a joint motion to amend the scheduling order for federal non-Indian water rights in Sections 3 and 5.

REPORT BY RIO GALLINA ACEQUIA ASSOCIATION THE EL RITO COMMUNITY DITCH ASSOCIATION AND LA ASOCIACION DE LAS ACEQUIAS DEL RIO VALLECITOS, TUSAS Y OJO CALIENTE

Section 5 – Rio Gallina

The determination of individual subfiles, and *inter se* proceedings determining priority dates and irrigation water rights have been completed. The following tasks remain:

- a. Adjudication of stock watering uses from surface water sources in Section 5. Completion of this task is pending due to the field work. The scheduling and completion of field work depends upon the availability of technical staff from both the Gallina-Capulin Acequia Association and the State. The parties are hopeful that the field work can be scheduled this summer.
- b. *Inter se* proceedings on surface water rights, including irrigation water rights and stockwater uses.

- c. The determination of groundwater rights, including water rights for two mutual domestic water consumer associations.
- d. Domestic well rights and other *de minimis* uses, if any.
- e. Entry of a partial final decree for Section 5.

Section 4 -- El Rito

The El Rito Ditch Association and the State of New Mexico have moved for entry of a Supplemental Order on Irrigation Water Requirements, in order to clarify and apply the provisions of previous Stipulation and Settlement Agreements to all subfiles within Section 4. Through the joint motion, the El Rito Ditch Association withdrew its motion in regard to customs of water distribution in Section 4. The Association and the State will share the cost of mailing the Supplemental Order to all subfile owners, as well as cost of publication of a notice in the *Rio Grande Sun*.

Although a Partial Final Decree for Section 4 was entered in 1973 it was incomplete. Remaining tasks include the following:

- a. Determination of priority dates of private ditches.
- b. Correction of errors and omissions in individual subfiles, including priority dates.
- c. Determination of stock ponds and other stock watering uses.
- d. Domestic well rights and other *de minimis* uses, if any.
- e. *Inter se* proceedings as appropriate.
- f. Amending the Partial Final Decree

Section 2 – Rio Vallecitos, Tusas y Ojo Caliente

There is no partial final decree in Section 2, and about 25% of the subfiles remain to be determined. La Asociacion de las Acequias del Rio Vallecitos, Tusas y Ojo Caliente has been

compiling lists of errors and omissions attendant to individual subfiles for which orders have been entered, and has been maintaining files on subfiles yet to be determined. In addition to the subfile work, which includes both initial determination and errors and omission process, the following tasks remain:

- a. A Supplemental Order on Irrigation Water Requirements, to clarify application of previous stipulation and settlement agreements to individual subfiles.
- b. Determination of priority dates. Sixteen ditches entered into a stipulation with the State of New Mexico concerning their individual priority dates in 1997. Priority dates should be determined for the remaining community ditches and priority ditches, and appropriate *inter se* proceedings on priority dates instituted.
- c. Determination of stock ponds and other stock watering uses.
- d. Domestic well rights and other *de minimis* uses, if any.
- e. *Inter se* proceedings as appropriate.
- f. Entry of a Partial Final Decree

REPORT BY THE ASOCIACIÓN DE ACÉQUIAS NORTEÑAS DE RIO ARRIBA

Priority Dates in Section 7

The Acequias Norteñas are completing a historical report regarding priority dates in Section 7 (except for the Village of Chama subsection, which has already by completed). The Acequias Norteñas propose to submit the historical report to the State by June 1, 2009.

REPORT BY THE RIO CHAMA ACEQUIAS ASSOCIATION

A scheduling order needs to be entered on the claims of Ohkay Owingeh (formerly San Juan Pueblo). As noted by the State, priority dates for all private ditches need to be determined

and a decision by the Special Master is pending on the contested priority dates for the Acequia de Chamita, Acequia de Salazar and Acequia de Hernandez. Because of new methodologies being utilized to determine irrigation water requirements in other sections of this adjudication, the parties will need to examine what effect this will have on the much earlier determination of irrigation water requirements in Section 1. The July 14, 2003 Order on priority dates for community ditches in Section 1 was vacated by Order filed December 8, 2003 (Doc. 7321). There should be a discussion between the acequias and the State on a process and schedule for entry of an order or orders on these priority dates. Additionally, the following tasks remain to be completed in Section 1 of this adjudication:

- a) Correction of errors and omissions in individual subfiles.
- b) Determination of stock pond rights.
- c) Determination of stock watering and domestic uses from acequias.
- d) Domestic well rights and other *di minimus* uses, if any.
- e) Determination of federal (Forest Service) water rights claims.
- f) *Inter se* proceedings as appropriate.
- g) Amendment of the Partial Final Decree.

Respectfully submitted,

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